

REMARKS

Claims 34-73 are pending in this application. By this Amendment, claims 37, 38, 65, 67, and 72 are amended. Support for the amendment to claim 65 is found at least at page 6, lines 17-18, of the specification. Claims 34-36, 39-62, 66, and 70 have been previously withdrawn by the Examiner. No new matter has been added.

At pages 2-3, the Office Action states that Applicants did not include the relationship of the earlier application to which priority is claimed. However, Applicants respectfully submit that the Application Data Sheet filed June 21, 2006 provide that this application is a National Stage entry under 35 U.S.C. § 371 of PCT/EP2004/014536 filed on December 21, 2004, and, further, that International application PCT/EP2004/014536 is a continuation of US patent application 10/740,428 filed on December 22, 2003. Accordingly, Applicants have provided the continuity data to establish the relationship to the priority applications.

At page 3, the Office Action states that the submission of citations BE and BG with the Information Disclosure Statement (IDS) filed November 11, 2009 does not comply with the provisions of 37 CFR §§ 1.97 and 1.98 because no English-language translation of the abstracts has been provided.

However, 37 CFR 1.98 (a)(3)(ii) provides that a copy of the translation shall be included “if a written English-language translation of a non-English-language document, or portion thereof, is within the possession, custody, or control of, or is readily available to any individual designated in § 1.56(c).” In this case, a copy of the translation has not been readily available. Nevertheless, the November 11 IDS complies with 37 CFR 1.98 (a)(3)(i) because the IDS transmittal letter contained a concise explanation of the relevance. Specifically, Citations BE and BG have been indicated as being counterpart applications to US Patent No. 5,071,902 and US Patent No. 4,918,139, respectively. Applicants respectfully request that Citations BE and BG, which are listed as Citations BB and BC, respectively in an Information Disclosure Statement filed concurrently herewith be considered.

At page 4 of the Office Action, the disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code.

The amendments to the specification obviate this objection.

Claim 38 is objected to for reciting, at the last line, nitril instead of nitrile.

Claim 38 has been amended as suggested in the Office Action.

Claim 65 is rejected under 35 U.S.C. 112, first paragraph, because the abbreviation HDMI is not disclosed. The amendment to claim 65 obviates this part of the rejection. Further, the Office Action states that the reaction of isocyanate with polyethylene oxide implies the existence of intermediates, which are not recited. However, it is respectfully submitted that the recitation wherein the amount of free isocyanate groups is 11 to 12 % by weight provides sufficient functional characteristics.

Claims 37, 38, 63-65, 67-69 and 71-73 are rejected under 35 U.S.C. 112, second paragraph for reciting narrower ranges within the same claim following “preferably,” as being indefinite.

The amendments to claims 37, 38, 65, 67, and 72 obviate this rejection. Claims 63, 64, 68, 69, 71, and 73 have been merely rejected for their dependency on a rejected claim.

Claims 37, 38, 63-65, 67-69, and 71 are rejected under 35 U.S.C. §103(a) as being unpatentable over EP 0382382 to Marrs et al. in view of U.S. Patent No. 3,713,868 to Gordon et al.

Independent claim 37 recites, among other features, at least one acrylic binder as component B1 obtainable by emulsion polymerization. At least these features of the independent claim cannot reasonably be considered to be suggested by the applied citations.

As appreciated by the Examiner, Marrs fails to suggest features corresponding to the above-quoted claim features. However, the Office Action asserts that a skilled artisan would have applied the densified, cured, acrylic-nitrile copolymeric foam of Gordon with the insecticidally active substances of Marrs to cover fabrics. In particular, the Office Action asserts that a skilled artisan would have varied the relative amounts of the components of the copolymer of example 2 of Gordon to arrive at the elected species recited in claim 38.

Marrs suggests using an insecticide in combination with a polymer. Two classes of polymers are preferred and exemplified, shellac and polystyrene. Both polymers are structurally not related to the specific acrylic binder of the claimed subject matter, and, thus, do not provide a starting point for combining this document with Gordon.

In addition to shellac and polystyrene, various classes of common polymers are listed in Marrs as being potentially useful in combination with an insecticide. If the Office were examining Marrs, one would readily agree that this citation merely provides a laundry list with an invitation to try. Given the huge amount of possible polymers in the cited classes, it is fair to say that Marrs imposes an undue burden on anyone trying to work the teaching of Marrs with regard to any polymer except polystyrene and shellac.

Someone faced with improving the disclosure of Marrs would first have to make a proper selection from the classes of polymers disclosed in Marrs. Even if one chooses acrylic copolymers there would still be an enormous choice of possible polymers, probably many hundreds.

To take Gordon into consideration, without being able to rely on the information about the structure of the binder from the present application, is clearly not an obvious choice.

It should be noted that the Office Action only discusses one technical aspect of Gordon, which is wash fastness. However, to be suitable as a binder for insecticides on fabrics, the binder also need to retain the insecticide and - at the same time - release it at a suitable rate to act as a long lasting insecticidal net (LLIN). There is no hint in Gordon that the disclosed material could be useful as a slow release material for an insecticide.

Accordingly, the arguments in the Office Action are based on the structural similarities between Gordon and the binder of the present claims. The Office Action fails, however, to give any credible arguments how someone of average skill in the art would have selected Gordon without the hindsight of the invention. This is due to the vast amount of possibilities and Gordon's failure to give any hint to a possible slow release of an insecticide.

It should be noted that Gordon was already around for about twenty years when Marrs was looking for suitable polymers for impregnating fabrics. Still, Marrs did not come up with the polymers of Gordon, but rather recommends two different classes of polymers, polystyrene and Shellac, which are markedly inferior in performance than the instantly claimed binder. This is a further indication that the Examiner's reasoning is based on hindsight.

In addition, a skilled artisan had no reasonable expectation of success that combining Marrs and Gordon would result in the remarkable insecticidal activity that has been demonstrated by the claimed subject matter. Specifically, In particular, the skilled artisan had no reasonable expectation of success that combining Marrs and Gordon as suggested would result in mortality rates for mosquitoes as high as 100% even after 20 washings that have been achieved with the claimed subject matter. See Table 2 at page 49 of applicants' disclosure. Marrs, by contrast, suggests, at the bottom of page 5, that the mortality rates are at best 68.8 % after only 2 washes.

Further, Gordon suggests that the acrylic-nitrile copolymers therein are first foamed before they are coated onto a fabric. Such a foaming step is not suggested in Marrs. Thus, the skilled artisan is not appraised by Gordon what properties the acrylic-nitrile copolymers would have when coated onto fabric without prior foaming.

Claims 37, 71, and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marrs in view of Gordon and in further view of U.S. 6,214,365 to Shoher et al.

The Office Action applies Shober for suggesting polyethylene terephthalate as a preferred fiber material for netting. Shober is not applied in a manner to cure the deficiencies of Marrs and Gordon discussed above.

Claims 37 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marrs in view of Gordon and in further view of U.S. 6,777,523 to Laas et al.

Laas is applied for suggesting 1,4-bis(isocyanatomethyl)-cyclohexane. However, we believe that the Examiner meant to rely on Laas for suggesting, at col. 5, line 13, 1,6-diisocyanatohexane. Laas is not applied in a manner to cure the deficiencies of Marrs and Gordon discussed above.

Claims 38, 63-65, 67-69, and 71-73 are in condition for allowance for at least their respective dependence on an allowable claim 37, as well as for the separately patentable subject matter that each of these claims recites.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 13156-00050-US1 from which the undersigned is authorized to draw.

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Respectfully submitted,

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